

1 PILLSBURY WINTHROP SHAW
2 PITTMAN LLP
3 Bruce A. Ericson #76342
4 Jacob R. Sorensen #209134
5 Marc H. Axelbaum #209855
6 50 Fremont Street
7 Post Office Box 7880
8 San Francisco, CA 94120
9 Tel.: (415) 983-1000
10 Fax: (415) 983-1200
11 Email: bruce.ericson@pillsburylaw.com

12 *Attorneys for Defendants BellSouth Corp.,
13 AT&T Corp., and AT&T Inc.*

14 [Additional counsel listed on signature page]

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 SAN FRANCISCO DIVISION

18 _____
19 In re:
20 NATIONAL SECURITY AGENCY
21 TELECOMMUNICATIONS RECORDS
22 LITIGATION
23 _____
24 _____
25 _____
26 _____
27 _____
28 _____

MDL Dkt. No. 06-1791-VRW

STIPULATION AND [PROPOSED]
ORDER REGARDING NEW CASE AND
NOTICE OF DISMISSAL OF
DEFENDANT CELLCO PARTNERSHIP

10 This Document Relates To:

11 *McMurray v. Verizon Communications,*
12 N.D. Cal No. C 09-0131 VRW
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____
28 _____

[Civil L.R. 6-2, 7-1(5), 7-12]

Courtroom: 6, 17th Floor
Judge: Hon. Vaughn R. Walker

1

RECITALS

2

3 **Transfer of McMurray to this MDL**

4 A. On July 10, 2008, Plaintiffs Rev. Joe McMurray, *et al.*, filed a complaint
 5 against Defendants Verizon Communications Inc. and Cellco Partnership (collectively, the
 6 “Verizon Defendants”); BellSouth Corporation, AT&T Corporation, and AT&T Inc.
 7 (collectively, the “AT&T Defendants”); George W. Bush, “individually in his executive
 8 capacity and as representative of the United States of America,” and the National Security
 9 Agency (collectively, the “Government Defendants”) in the United States District Court for
 10 the Southern District of New York in Case No. 1:08-6264.

11 B. On August 12, 2008, the Judicial Panel on Multidistrict Litigation (“JPML”)
 12 issued a Conditional Transfer Order (“CTO-7”) transferring this action to the U.S. District
 13 Court for the Northern District of California as part of MDL-1791, *In re National Security*
 14 *Agency Telecommunications Records Litigation*. On September 9, 2008, the Plaintiffs filed
 15 a motion to vacate CTO-7. The JPML considered the Plaintiffs’ motion without oral
 16 argument at its November 20, 2008 sitting.

17 C. On Dec. 19, 2008, the JPML ordered that this action be included in MDL
 18 No. 1791 for coordinated or consolidated pretrial proceedings. The JPML’s transfer order
 19 was filed with this Court on Dec. 23, 2008.

20 **Timing of Duty to Respond in McMurray**

21 D. Prior to transfer, the Verizon Defendants, AT&T Corporation and AT&T
 22 Inc. were served with the *McMurray* complaint on November 12, 2008. Accordingly, the
 23 original deadline for the Verizon Defendants, AT&T Corporation and AT&T Inc. to answer
 24 or otherwise respond was December 2, 2008. *See* Fed. R. Civ. P. 12(a)(1).

25 E. Defendant BellSouth Corporation was served with the *McMurray* complaint
 26 on November 14, 2008. Accordingly, the original deadline for BellSouth Corporation to
 27 answer or otherwise respond to it was December 4, 2008. *See id.*

28

1 F. The Government Defendants were served with the *McMurray* complaint on
2 November 14, 2008. Accordingly, the deadline for the Government Defendants to answer
3 or otherwise respond to it is January 12, 2009. *See* Fed. R. Civ. P. 12(a)(2).

4 G. The Verizon and AT&T Defendants informally agreed with the *McMurray*
5 Plaintiffs to an extension of those defendants' respective deadlines to respond to the
6 complaint while they were negotiating this Stipulation.

7 H. The parties have not previously requested an adjournment or an extension of
8 time to respond to the *McMurray* complaint from any court.

9 Disposition of *McMurray* Before This Court

10 I. The parties have not been able to reach complete agreement regarding the
11 appropriate posture of the *McMurray* complaint in the MDL, and each side reserves its right
12 to bring the matter to the Court's attention.

13 J. Plaintiffs are agreeable to staying the obligations of all of the Defendants to
14 answer or otherwise respond to the *McMurray* complaint for 65 days from the date of this
15 stipulation in the interim, that is, until March 19, 2009.

STIPULATION

18 Plaintiffs and Defendants hereby stipulate as follows:

19 1. The Plaintiffs, the Verizon Defendants, the AT&T Defendants, and the
20 Government Defendants hereby stipulate that no Defendant need answer or otherwise
21 respond to the complaint in this action until March 19, 2009.

22 2. By entering into this Stipulation, neither Plaintiffs nor Defendants waive any
23 procedural or substantive defenses, rights or objections, including, but not limited to, the
24 right to challenge personal jurisdiction over any particular Defendant
25

DISMISSAL

27 Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), Plaintiffs hereby dismiss
28

1 Defendant Cellco Partnership from this action without prejudice.

2 Dated: January 13, 2009.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CARL J. MAYER
MAYER LAW GROUP LLC
66 Witherspoon Street – Suite 414
Princeton, NJ 08542

BRUCE I. AFRAN
10 Braeburn Drive
Princeton, NJ 08540

STEVEN E. SCHWARZ
THE LAW OFFICES OF STEVEN E. SCHWARZ
2461 W. Foster Ave., #1W
Chicago, IL 60625

By _____/s/ Bruce I. Afran
Bruce I. Afran
Attorneys for Plaintiffs

PILLSBURY WINTHROP SHAW PITTMAN LLP
BRUCE A. ERICSON
JACOB R. SORENSEN
MARC H. AXELBAUM
50 Fremont Street
Post Office Box 7880
San Francisco, CA 94120-7880

SIDLEY AUSTIN LLP
DAVID W. CARPENTER
DAVID L. LAWSON
BRADFORD A. BERENSON
EDWARD R. McNICHOLAS
1501 K Street, N.W.
Washington, D.C. 20005

By _____/s/ Marc H. Axelbaum
Marc H. Axelbaum
*Attorneys for Defendants BellSouth Corp.,
AT&T Corp., and AT&T Inc.*

WILMER CUTLER PICKERING HALE AND
DORR LLP
RANDOLPH D. MOSS (pro hac vice)
SAMIR C. JAIN # 181572
BRIAN M. BOYNTON # 222193
CATHERINE M.A. CARROLL (pro hac vice)
1875 Pennsylvania Ave, N.W.
Washington, DC 20006

1 Tel.: (202) 663-6000
2 Fax: (202) 663-6363
Email: randolph.moss@wilmerhale.com

3 MUNGER, TOLLES & OLSON LLP
4 HENRY WEISSMANN # 132418
5 SUSAN R. SZABO # 155315
AIMEE A. FEINBERG # 223309
355 South Grand Avenue
35th Floor
6 Los Angeles, CA 90071
7 Tel.: (213) 683-9100
Fax: (213) 683-5150
Email: henry.weissmann@mto.com

8

9 By /s/ Randolph D. Moss
10 Randolph D. Moss
11 *Attorneys for Verizon Communications Inc. and
Cellco Partnership*

12 GREGORY G. KATSAS
13 Assistant Attorney General, Civil Division
14 JOHN C. O'QUINN
15 Deputy Assistant Attorney General
16 DOUGLAS N. LETTER
17 Terrorism Litigation Counsel
18 JOSEPH H. HUNT
19 Director, Federal Programs Branch
20 ANTHONY J. COPPOLINO
21 Special Litigation Counsel
22 ALEXANDER K. HAAS
PAUL G. FREEBORNE
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW, Rm. 6102
Washington, D.C. 20001
Tel.: (202) 514-4782
Fax: (202) 616-8460
Email: tony.coppolino@usdoj.gov

23 By /s/ Anthony J. Coppolino
24 Anthony J. Coppolino
25 *Attorneys for the United States*

26
27
28

DECLARATION PURSUANT TO GENERAL ORDER 45, § X.B

2 I, MARC H. AXELBAUM, hereby declare pursuant to General Order 45, § X.B,
3 that I have obtained the concurrence in the filing of this document from each of the other
4 signatories listed above.

5 I declare under penalty of perjury that the foregoing declaration is true and correct.

6 Executed on January 13, 2009, at San Francisco, California.

7 _____ /s/ Marc H. Axelbaum
8 _____ Marc H. Axelbaum

9

10

11

12

13

14

15

16

17

18

19

20

21

22

25

24

23

20

21

1

[PROPOSED] ORDER

2 Pursuant to the foregoing Stipulation and Notice of Dismissal, and good cause
3 appearing, IT IS HEREBY ORDERED that:

4 No party need answer or otherwise respond to the complaint in *McMurray v.*
5 *Verizon Communications*, N.D. Cal No. C 09-0131 VRW, until March 19, 2009.

6 IT IS HEREBY FURTHER ORDERED that Defendant Cellco Partnership is
7 dismissed from this action without prejudice.

8 PURSUANT TO STIPULATION AND NOTICE, IT IS SO ORDERED.

9 Dated: Jan 21, 2009.

